IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 534 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MUSLA ALAMBHAI REHMANBHAI & 4 - Opponent(s)

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Appearance :
PMC KC SHAH APP for Appellant(s) : 1,
MR VIRAT G POPAT for Opponent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 28/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellants – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of acquittal rendered on 06-12-2003 by the learned Addl. Sessions Judge, 2nd Fast Track Court, Patan in Sessions Case No. 133 of 2000 acquitting the respondents accused for the offences punishable u/ss 302 and 34 of the I.P. Code.

2. We have called for the Record and Proceeding from the Trial Court and the same is available with us. The learned A.P.P. Mr. K.C. Shah for the State and advocate Mr. V.G. Popat for the respondent have provided this Court with necessary copies of the evidence and documents. Appeal is required to be heard finally and upon the request of the learned Advocates for the parties, the appeal is admitted and learned advocate Mr. V.G. Popat for the respondent waives service on behalf of the respondents.

3. In brief, the prosecution case was that deceased Jarina was the sister of complainant Alambhai Jaminbhai and was married to accrued Alambhai Rahemanbhai before about 1 ½ years of the incident and was residing at her

matrimonial house at village Bhajna. Accused Rahemanbhai was the father-in-law, accused Isambhai Rahemanbhai and accused Sumabhai Rahemanbhai were the brothers-in-law and accused Lekariben Rahemanbhai was the mother-in-law of deceased Jarina. On the previous day of the incident i.e. on 8-7-1987 complainant went to village Bhajna to call her sister Jarina. At that time respondents accused told complainant to keep Jarina at their house as they had some work. Therefore, complainant stayed at his sister's house that night and on the next morning complainant went to the house of one Musabhai, brother of respondent accused Rahemanbhai. While he was there, they heard shouts and saw that people had assembled at the house of Jarina. The complainant rushed there and saw that door of the house was half opened and Jarina was lying with burn injuries in the middle of the door and was unconscious. On inquiry with respondent - accused Raheman, he informed that Jarina had sustained burn injuries on her own and thereafter she was taken to private hospital at Dhanera by complainant, respondent accused Raheman and his wife respondent accused Lakriben and

Musabhai Amibhai. Thereafter, complaint went to inform his parents at village Anarpur Chhota and they came to Dhanera. The police also came there in the evening but Jarina was unconscious. Accused Raheman stayed for about three days with Jarina. After 17 days of the treatment, the doctor advised to take Jarina to another hospital. Therefore, she was taken to Anarpur Chhota village. She was unconscious at that time. Thereafter she was brought to Palanpur Civil Hospital and during treatment she regained her consciousness. On inquiry by complainant and his parents as to how she was burnt, Jarina informed that the respondents accused caught hold of her, gaged her mouth, beat her after blind folding and burnt her after pouring kerosene over her body. On account of burn injuries Jarina died in the hospital during treatment.

4. On the basis of complaint filed by Alambhai Jaminbhai before Palanpur Police Station on 1-8-1997 initially offence was registered as I – CR No. 00 of 1997 for the offence punishable u/s 307, 323 and 114 of the I.P. Code. The complaint was transferred

to Dhanera Police Station on 2-8-1977 as the alleged offence was committed in the jurisdiction of Dhanera Police Station and it was registered as I - CR No.72 of 1997 and investigation was started. As Jarina died during the treatment Section 302 of the I.P. Code was added.

5. It may be recorded that immediately after the incident when Jarina was taken to hospital, her brother Jaminbhai Hajibhai gave accidental report at Dhanera Police Station. On the basis of that report, “Janvajog” Entry No.8 of 1997 was recorded in the police diary and Executive Magistrate was called to record her dying declaration. The Executive Magistrate recorded dying declaration of Jarina on 9-7-1997. It also appears that panchanama of scene of incident was drawn on 10-7-1997 between 9-30 and 10-00 hours. On account of registration of offence, during investigation, again Executive Magistrate was called and another dying declaration was recorded on 1-8-1997 at Palanpur Hospital and statement of witnesses were recorded. As Jarina died during treatment inquest panchanama was drawn. The dead body of

Jarina was sent for postmortem and the accused were arrested.

6. On completion of investigation, charge sheet was laid before learned J.M.F.C., Dhanera for the offence punishable u/s 302 of the I.P. Code. As the offence was exclusively triable by Sessions Court, the case was committed to the Sessions Court, Banaskantha at Palanpur and it was registered as Sessions Case No. 137 of 2004. The learned Addl. Sessions Judge, 3rd Fast Track Court, Deesa framed charge Exh.5 against the respondents – accused for the aforesaid offence. The charge was read over and explained to the respondents - accused who pleaded not guilty to the charge and claimed to be tried. Therefore, prosecution adduced evidence to prove the charge. On completion of recording of evidence, learned trial Judge explained to the respondents accused the incriminating circumstances appearing in the evidence against them. The respondents - accused in their further statement recorded u/s 313 of the Code of Criminal Procedure denied having committed offence and stated that false case has been filed against them.

7. After hearing learned A.P.P. for the State and learned advocate for the respondents - accused, trial Court found that prosecution failed to prove the charge levelled against the respondents - accused and consequently acquitted them for the offence charged against them. Being aggrieved and dissatisfied by the impugned judgment, State has preferred this appeal.

8. After hearing the learned A.P.P. for the State, we have admitted the appeal. As the record and proceedings were available, with the consent of the learned A.P.P. and the learned advocate for the accused Mr. V.G. Popat, we have finally heard and decided this appeal.

9. We have heard the learned A.P.P. for appellant State and learned advocate Mr.V.G. Popat for respondents accused at length and in great detail

10. The entire prosecution case hinges upon the oral testimonies of P.W. 8 Alambhai Jaminbhai Exh. 25, P.W. 10 Jaminbhai Hajibhai

Exh. 28 and P.W. 11 Samuben wife of Jaminbhai Exh. 29. The prosecution also relied upon documentary evidence in the form of dying declaration of deceased Jarina and the complaint lodged by Alambhai Jaminbhai alleging involvement of respondents – accused in the offence.

11. It is pertinent that according to the prosecution case, Alambhai Jaminbhai the brother of deceased Jarina went to call her at her matrimonial house on the previous day of the incident but as there was some work she was not sent with him and complainant stayed overnight at the house of his sister Jarina and on the next morning when complainant went to the house of brother of respondent accused Raheman, the incident occurred. The evidence also indicates that immediately after the incident Jarina was taken to hospital and the incident was reported to the police.

12. The prosecution produced report at Exh.39 given to the police by father of Jarina, Jaminbhai Hajibhai. The report is given immediately after the incident on the same

day i.e. 9-7-1997. It indicates that Jarina was married to respondent – accused Alambhai Rahemanbhai before about twelve months and she was residing with him since one month. It further indicates that Alam son of Jaminbhai went to meet Jarina at village Bhajna and returned in the noon and informed him that Jarina sustained burn injuries on account of bursting of primus while she was cooking and she was taken to private Hospital at Dhanera for treatment and therefore Jaminbhai immediately went to the Hospital at Dhanera and on inquiry Jarina informed him that she sustained injuries while cooking. The report also indicates that there was no harassment to Jarina from the respondents – accused and she had happy marriage life. In view of this, it clearly emerges that immediately after the incident, the brother of deceased Jarina who had accompanied Jarina to the hospital after the incident informed his father about the incident who after making inquiry gave report to the police that Jarina had sustained accidental burn injuries. However, strangely after about 17 days of the incident, the brother of deceased lodged complaint alleging homicidal death of Jarina. It is

significant that complaint is not filed by the father of the deceased who had given report of accidental burn injuries but is filed by the brother of deceased Jarina. The complaint does not disclose the fact that earlier report about accidental burn injuries was given to police by the father of the deceased. It appears that only with a view to come out of report Exh.39, the complaint is filed by brother of deceased and therefore the fact of report is not disclosed in the complaint. In our view, considering these facts the complaint is filed with oblique motive.

13. In the complaint dated 1-8-1997 Exh. 48 filed by Alambhai Jaminbhai, the complainant reiterated the facts given in report Exh. 39 and further added that after about 17 days of treatment doctor advised to take Jarina to another hospital and therefore she was taken to village Anarpur Chhota and thereafter to Civil Hospital, Palanpur where Jarina regained her consciousness and on inquiry she stated that the respondents - accused caught hold of her, gagged her mouth, blind folded her and set her on fire after pouring kerosene.

The complaint is filed after about 21 days of incident. It appears that an effort is made to explain delay in lodging complaint by alleging that Jarina was unconscious till she was treated at Civil Hospital, Palanpur and disclosed that the respondents accused were responsible for her burn injuries. But evidence of P.W. 9 Dr. Navnit indicates that Jarina was conscious when she was brought to the hospital at Dhanera immediately after the incident and was able to speak when she was discharged after recovery. Therefore, it is difficult to believe that complainant came to know about the involvement of the respondents in the incident for the first time when the deceased informed him in Civil Hospital at Palanpur. Moreover, there is no accusation in the complaint that there was harassment to Jarina from the respondents – accused. The complainant did not allege motive behind the offence. It is true that it is not always necessary to prove motive for offence. But in the facts and circumstances of this case, it is difficult to believe that there was any motive to do away with deceased Jarina. The complaint does not indicate that there was marital discord between Jarina and her

husband and fact of catching hold of the deceased, gaging her mouth, beating her and pouring kerosene is alleged for the first time in the complaint filed on 1-8-1997. The prosecution examined P.W. 9 Dr. Navnitbhai Niranjankumar Shethi at Exh. 26. The witness deposed that Jarina was brought to the hospital with burn injuries and he had treated her and issued certificate Exh. 27. The doctor also deposed that Jarina was discharged from the hospital on 27-7-1997. In the cross-examination the witness admitted that Jarina was conscious when she was brought to the hospital and was discharged after recovery. Therefore, in our view, compliant Exh. 48 appears to be an afterthought and was filed to achieve some ulterior motive and therefore the same cannot be relied upon. It appears that when after the incident Jarina was taken to a private hospital, her dying declaration was recorded by Executive Magistrate.

14. The prosecution produced certificate dated 2-8-1997 given by the doctor at Exh. 27. It appears from Certificate Exh. 27 that Jarina was discharged from the hospital and her

condition at the time of discharge was satisfactory. In view of this evidence, it becomes clear that Jarina was treated from 8-7-1997 to 27-7-1997 by P.W. 9 Dr. Navnit and she had recovered and she was discharged from the hospital as she has recovered and her condition was satisfactory. The evidence also indicates that when Jarina was brought to the hospital she was conscious.

15. The cumulative effect of this evidence is that Jarina was conscious when she was admitted in the hospital as well as when she was discharged after treatment of about 18 days as she recovered. However, she did not allege that the respondents – accused were responsible for her injuries. This evidence is contrary to report Exh. 39 given to the police immediately after the incident. Therefore, in our view, the complaint does not inspire confidence.

16. The prosecution also examined Executive Magistrate (Deputy Mamlatdar) P.W. 22 Babubhai Somabhai Makwana at Exh. 67. The witness recorded dying declaration of Jarina on 9-7-1997. According to the witness, he received

'Yadi' Exh. 38 from Police Station Officer (PSO), Dhanera Police Station to record dying declaration of Jarina and he made an endorsement of time and day on the 'Yadi' Exh. 38. It appears from the evidence of the witness that on receipt of 'Yadi' Exh. 38, the witness went to hospital and ascertained from the doctor that the patient was conscious and was able to give her dying declaration and thereafter himself ascertained and satisfied that the patient was conscious and was able to give reply and therefore started recording dying declaration Exh. 68. The evidence of the witness also indicates that the doctor was present during recording of the dying declaration and on completion of recording Jarina subscribed her thumb impression on it after it was read over to her. The witness also deposed that original dying declaration was misplaced and could not be traced despite due diligence and therefore true copy of the dying declaration was produced on record. The witness was not cross-examined by the respondents – accused.

17. The prosecution produced dying declaration at Exh. 68. It appears from dying

declaration that the incident occurred at 9-00 am. when Jarina was making “chapaty” her cloth caught fire from primus. The dying declaration was recorded between 18-00 and 18-25 hours on 9-7-1997.

18. The prosecution also produced 'yadi' at Exh. 38 given by Police Station Officer, Dhanera Police Station to the witness. It indicates that the witness was called to record dying declaration of deceased Jarina and it bears an endorsement of 'time' and 'date' of receipt of 'Yadi made by the witness.

19. This evidence, clearly indicates that immediately after the incident it was reported to Dhanera Police Station and Executive Magistrate was summoned to record dying declaration and dying declaration Exh. 68 came to be recorded. It clearly indicates that Jarina had sustained burn injuries on account of accident and the respondents – accused were not responsible for the same. The Executive Magistrate who recorded the dying declaration ascertained that deceased Jarina was conscious and was in fit state of

mind to make statement with regard to the cause of her injuries and after ascertaining the same he recorded the dying declaration, There is no reason to disbelieve the witness or dying declaration Exh. 68. Therefore, in our view, it is difficult to believe that the respondent accused caught hold of Jarina and gaged her mouth, blind folded her, beat her and poured kerosene and set her on fire.

20. In view of above, it becomes clear that on the previous day of the incident, Alambhai the brother of Jarina went to Jarina's matrimonial house and stayed there at night and on the next morning when he went to the house of brother of respondent accused Raheman, Jarina sustained burn injuries while cooking and thereafter she was taken to the hospital where her dying declaration came to be recoded. In our view, on overall reappreciation of the evidence, the prosecution case does not inspire confidence.

21. The prosecution examined P.W. 8 Alambhai Jaminbhai at Exh. 25. The witness was brother of deceased Jarina. It appears from the evidence of this witness that he went to take

Jarina at her house but the respondents – accused did not send her and therefore he stayed there overnight and on the next morning when he went to have tea at the house of the brother of respondent accused – Raheman, he heard shouts at the house of respondent – accused Raheman and therefore he went there and saw that the door of the house was half opened and Jarina was lying between the door with burn injuries. It also appears that thereafter he and the respondents took Jarina to a private hospital at Dhanera and thereafter the witness went to inform his parents and thereafter all of them came to Dhanera. According to the witness Jarina was treated at the private hospital for 17 days and when she was being treated at Civil Hospital, Palanpur at about 10-00 O'clock at night she stated that the respondents accused were responsible for her burn injuries, and therefore, the complaint was filed. The evidence also indicates that Jarina was treated at Civil Hospital, Palanpur for 4 days and thereafter she was shifted to Civil Hospital, Ahmedabad and she died there on 9-8-1997 during treatment. The cross-examination of this

witness indicates that the witness accompanied Jarina when she was admitted in the hospital at Dhanera and police came there after about one hour thereafter. The cross-examination further indicates that police interrogated him and when Executive Magistrate came to record dying declaration, the witness and his parents were present. The witness also deposed that when Jarina was discharged from the hospital respondent – accused Raheman was present and there was quarrel between him and the respondent accused Raheman about medicines. Analysing this evidence, it clearly appears that the witness along with the respondents took Jarina to the hospital for treatment. However, the witness did not lodge any complaint to the police with regard to the alleged offence. It is true that the witness deposed that Jarina informed him about the role played by the respondents - accused in the offence in the hospital at Palanpur but considering the other evidence it is difficult to believe that Jarina was not in a position to speak about the incident for such a long time. The medical evidence with regard to health of Jarina is contrary to the deposition of the

witness. It also appears from the evidence of this witness that he and his parents remained with Jarina during the entire period of her treatment and she was discharged from private hospital as she had recovered. However, no complaint was filed alleging involvement of the respondents -accused. In our view, the witness is not telling the truth with a view to support his compliant. Therefore, the evidence of this witness does not inspire confidence and therefore cannot be relied upon.

22. The prosecution also examined P.W. 10 Jaminbhai Hajibhai at Exh. 28. The witness was the father of deceased Jarina. The evidence of the witness indicates that his son P.W. 8 Alambhai informed him that Jarina has sustained burn injuries. Therefore, the witness, his wife P.W. 11 Samuben and P.W 8 Alambhai went to hospital and saw that Jarina was not speaking. The evidence also indicates that Jarina informed him at Civil Hospital, Palanpur that the respondents accused caused burn injuries to her. In the cross-examination the witness admitted that his son had informed him as to how Jarina had

sustained burn injuries and after meeting Jarina and the respondent accused he went to police station. But the witness denied having given report Exh.39. The witness also denied that in the statement recorded by the police, he stated that his son Alambhai informed him that Jarina sustained burn injuries on account of bursting of primus while she was cooking and therefore he went to the hospital at Dhanera and his daughter informed as stated above. The contradictions have been proved through Investigating Officer P.W. 13 Kalubhai Rajubhai Chauhan at Exh. 36. The Investigating Officer deposed that P.W. 10 Jaminbhai Hajibhai made report Exh. 39 before him with regard to the incident. It appears that the witness is not telling truth. According to him, when he went to the hospital at Dhanera Jarina was not speaking and did not give any history. According to the doctor, Jarina was conscious and was able to speak when she was admitted in the hospital. Report Exh. 39 given on the same day to the police also indicates that Jarina informed that she sustained burn injuries on account of accident. There is no reason to disbelieve the evidence of the doctor and

the report given immediately after the incident to the police with regard to the incident. The witness also admitted that after coming to the hospital at Dhanera he went to police station but denied having given report Exh. 39. There is no evidence to indicate that Jarina remained unconscious till she was admitted in the civil hospital at Palanpur and regained consciousness during treatment at the hospital. On the contrary, the evidence of P.W. 9 Doctor Navnitbhai indicates that when Jarina was discharged from the hospital she was able to speak, walk and her condition was satisfactory. The certificate Exh. 27 also indicates that the condition of Jarina was satisfactory when she was discharged from the hospital. Therefore Jarina was conscious at Dhanera Hospital but she did not allege involvement of the respondents accused in the incident. However, strangely thereafter the complaint came to be filed by the witness on 1-8-1997. In our view, the evidence of this witness cannot be relied upon. We are of the view that the witness has tried to falsely implicate the respondents – accused in the offence.

23. The prosecution also examined P.W. 11 Samuben the wife of Jaminbhai at Exh. 29. She was the mother of deceased Jarina. According to the witness, her son informed her about burn injuries sustained by Jarina and therefore, they went to the hospital at Dhanera and on inquiry with Jarina she did not speak. The evidence of this witness indicates that Jarina was taken home after treatment at the hospital for about 17 days. Thereafter again she was taken to Civil Hospital, at Palanpur where she allegedly stated that the respondents- accused were responsible for her burn injuries. The cross-examination of the witness indicates that the police interrogated her at Dhanera Hospital but the witness denied that in her statement before the police she stated that Jarina informed her that she sustained burn injuries while cooking. The witness denied that in her statement before police she stated that Jarina was happy with her marriage. The witness also denied that her husband went to police and informed about the incident. The contradictions of this witness have been proved through the Investigating Officer P.W. 14 Harisinh Bahardursinh Rathod Exh. 40.

Analysing the evidence, it clearly emerges that P.W. 8 Alambhai informed P.W. 11 Samuben about the incident. Therefore, she along with her husband P.W.10 Jaminbhai and P.W. 8 Alambhai went to the hospital at Dhanera and on inquiry with Jarina, she informed that she sustained burn injuries while cooking. It appears that the witness resiled from her statement only with a view to support the prosecution case. Therefore, in our view, the evidence of this witness cannot be relied upon to connect the respondents – accused with the offence.

24. The prosecution examined Executive Magistrate P.W. 16 Babubhai Narsinhbhai Taral at Exh. 45. This witness recorded second dying declaration at Palanpur Hospital. According to the witness, on 1-8-1997 he received 'Yadi' from Palanpur City Police Station to record dying declaration of Jarina. Therefore, he went to the hospital and inquired from the doctor as to whether the patient was conscious or not. The doctor after examining the patient informed that the patient was conscious. Therefore, he started recording dying declaration of Jarina. The

witness also deposed that he recorded dying declaration Exh. 46 and the doctor made an endorsement about consciousness of the patient over the dying declaration. The witness denied that he recorded the dying declaration in the presence of the relatives of Jarina.

25. The prosecution produced second dying declaration of deceased Jarina at Exh. 46. It is recorded after about 21 days of incident. It appears from the tenor of the dying declaration that Jarina gave history of her treatment in reply to a question put to her by the Executive Magistrate as to how she sustained injuries but she did not give details as to how she sustained bur injuries. She only stated that she was admitted in private hospital at Dhanera where she was treated for about 17 to 18 days and thereafter she was discharged and she remained at home for about 4 to 5 days but thereafter, on 1-8-1997 at about 2-00 p.m. she was admitted at Civil Hospital at Palanpur she also stated that she does not know as to how she was burnt. This does not indicate as to how the incident occurred. The prosecution case consistently is that as Jarina insisted to

go to her parental house, the respondents accused caught hold of the deceased, gagged her mouth, beat her, poured kerosene over her and set her on fire. These details are not found in the dying declaration. The Dying Declaration Exh. 46 shows that eyes of the deceased were operated and there was quarrel in the house since two to three days before the incident and her husband respondent accused Alambhai Rahemanbhai broke her spectacles and she was beaten. These facts are coming for the first time in the dying declaration. It is not the prosecution case that there was quarrel in the house before 2 to 3 days of incident and it was one of the reasons for commission of alleged offence. Even P.W. 8 Alambhai Jaminbhai Exh. 25 did not depose about any quarrel between the respondent – accused Alambhai and Jarina. It appears from the dying declaration that the deceased was conscious throughout the period between the day of incident and her admission in civil hospital at Palanpur as she had narrated entire treatment in her dying declaration. It also appears that she was also oriented during this period. However, strangely no complaint was filed during this

period. Considering time gap between the day of the incident and the day of recording of second dying declaration and also considering the fact that during this entire period of hospitalisation and treatment Jarina was in the company of her parents, possibility of false implication of the respondents accused cannot be ruled out as there was sufficient time for the relatives of the deceased to persuade her to implicate the respondents. It is true that the doctor has made an endorsement over the dying declaration that the patient was conscious. However, considering the circumstances of recording of the dying declaration, in our view, it would not be safe to rely upon such dying declaration as it was recorded after long gap of time after the incident and it was contrary to the earlier dying declaration which was recorded immediately after the incident. In our view, dying declaration Exh. 46 cannot be relied upon to connect the respondents with the offence.

26. The prosecution examined P.W. 12 Dr. Pratimaben Bharatkumar Oza at Exh. 30. The witness performed postmortem of dead body of

Jarina. The postmortem report is produced at Exh. 31. It indicates that the cause of death of Jarina was due to shock due to septicaemia as a result of burns over body. In view of the fact that the evidence indicates that the deceased sustained burn injuries on account of accident, it cannot be said that death was homicidal in natural.

27. The prosecution examined panchas P.W. 4 Narsinhbhai Bhurabhai at Exh.19 and P.W. 5 Chhaganbhai Kehrabhai at Exh. 21. These witnesses were the panchas to panchanama of scene of offence Exh.20. Both these witnesses turned hostile and did not support the prosecution case. The panch witnesses were confronted with panchanama. The panchanama Exh. 20 indicates that nothing was recovered from the place of incident. It also indicates that flour was found on the floor. Except that nothing was found.

28. As observed earlier, the prosecution case is that deceased was set on fire by the respondents after pouring kerosene over her. However, no kerosene stains are found at the place of the incident. On the contrary,

flour was found from the place of incident. This fact indicates that the incident occurred while cooking. Therefore, earlier version of deceased Jarina in first dying declaration that she was burnt on account of fire while cooking gets corroboration. Similarly report Exh. 39 also indicates that incident occurred while cooking. In our view, it is difficult to believe that the respondents poured kerosene over Jarina and set her on fire. Therefore, prosecution case cannot be believed.

29. The prosecution examined P.W. 13 Kalubhai Rajubhai Chauhan at Exh. 36. The witness recorded “Janvajog” entry No. 8/1997 at 17-30 hours on the basis of he report made by P.W. 10 Jaminbhai Hajibahi. The witness issued order Exh. 37 handing over investigation to P.W. 14 Harsinh and also gave 'Yadi' Exh. 38 to the Executive Magistrate to record dying declaration of Jarina.

30. The prosecution examined P.W. 14 Harisinh Bajusinh Rathod at Exh. 40. The witness carried out investigation in respect of 'Janvajog' entry No. 8 of 1997. According to

him, he drew panchanama of scene of offence Exh. 20 and recorded statement of the witnesses. Thereafter, as the offence was registered at Dhanera Police Station in respect of the said incident the papers were handed over to the Investigation Officer of the said offence.

31. The prosecution examined panch P.W. 15 Rahimbhai Umarbhai at Exh. 42. The witness was panch to panchanama Exh. 43 in respect of injuries found on the person of Jarina. It was drawn on 1-8-1997. The panchnama indicates that Jarina had burn injuries.

32. The prosecution examined P.W. 17 Mithabhai Mulabhai Parmar at Exh. 47. The witness was Police Station Officer at Palanpur City Police Station at the relevant point of time and had registered the offence on the basis of the complaint given by Alambhai Jaminbhai. In the cross-examination, the witness admitted that when the complaint was lodged, the complainant did not disclose that earlier the incident was reported at Dhanera Police Station. The witness also deposed that had such facts been disclosed before him, he

would not have registered the offence at Palanpur Police Station. In view of this evidence, it appears that the complainant did not disclose about the report made to Dhanera Police Station with regard to the incident. Therefore, in our view, the complaint was filed suppressing material facts with some oblique motive.

33. The prosecution examined A.S.I. P.W. 18 Krishnakant Mithabhai at Exh. 51. The witness was on duty on police table at Civil Hospital, Ahmedabad at the relevant time. The witness after drawing inquest panchanama handed over dead body of deceased Jarina to her relatives and wrote 'Yadi' to the Civil Surgeon for postmortem.

34. The prosecution examined Investigating Officer P.W. 20 Umedsinh Ravji Thakor at Exh. 57. The witness carried out investigation in respect of the offence. According to him, he recorded statement of deceased, witnesses and filed charge sheet. The contradictions of P.W. 10 Jaminbhai have been proved through this witness.

35. In view of above evidence, it clearly emerges that deceased Jarina sustained burns injuries on account of accident and the respondents – accused were not responsible for such injuries and immediately after the incident deceased Jarina was taken to the private hospital and her brother accompanied the respondents accused to the hospital at Dhanera. It also emerges that the deceased was treated at private hospital at Dhanera for about 17 days and her parents and brother were present through out her treatment and the deceased was discharged from the hospital at Dhanera as her condition was satisfactory and thereafter she remained at her parents' house for about 4 days. Thereafter, she was taken to Civil Hospital, at Palanpur and she was conscious and oriented throughout all this period. Neither deceased nor her father Jaminbhai alleged involvement of the respondents in the offence immediately after the incident but on the contrary informed the police that deceased had sustained burn injuries on account of accident. However, thereafter for some oblique reason the complaint was filed after about 21 days of

incident. There is no satisfactory explanation for delay in filing of the complaint. Even the prosecution has not been able to establish the motive behind the incident. Therefore, the learned trial Judge was justified in recording acquittal of the respondents and the appeal deserves to be dismissed.

36. For the foregoing reasons, in our view, the learned trial Judge was justified in recording acquittal of the respondents – accused. Therefore, no interference is warranted in the impugned judgment and the appeal fails and stands dismissed.

(J.R. Vora, J.)

(Bankim N Mehta, J.)

/JVSatwara/